

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LORRAINE MASCIARELLI,

Plaintiff,

INDEX NO. 22-cv-7553

-against-

NEW YORK CITY DEPARTMENT OF
EDUCATION,

Defendant.

**AFFIRMATION OF AUSTIN
GRAFF IN OPPOSITION TO
THE DEFENDANT'S
MOTION TO DISMISS**

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AUSTIN GRAFF, an attorney admitted to practice law before this Court, who is not a party to this Action, affirmed to be true under penalties of perjury says:

1. I am associated with The Scher Law Firm, LLP, the attorneys for the Plaintiff LORRAINE MASCIARELLI ("Plaintiff") in the above-entitled Action, and am familiar with the relevant facts and circumstances surrounding the allegations that comprise this litigation based upon the records maintained by my office regarding this matter. I submit this Affirmation in opposition to the Defendant's Motion to Dismiss pursuant to FRCP Rule 12(b)(6).

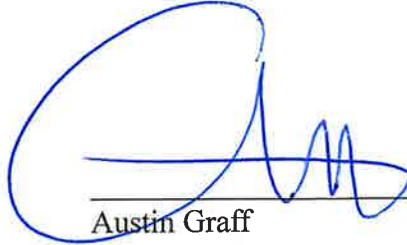
2. The Plaintiff relies upon the following exhibits in support of their Motion:

- (a) **Exhibit A**, a copy of the August 24, 2021 Vaccine Mandate;
- (b) **Exhibit B**, a copy of the Declaration of Impasse;
- (c) **Exhibit C**, a copy of the deposition transcript of Eric Eichenholtz;
- (d) **Exhibit D**, a copy of the City's reasonable accommodation notice regarding testing;
- (e) **Exhibit E**, a copy of the Mayor's February 6, 2023 Press Release;
- (f) **Exhibit F**, a copy of the *Labarbera* decision; and
- (g) **Exhibit G**, a copy of the New York Post article regarding "rubber rooms"

3. For the reasons argued in the accompanying Memorandum of Law, the Defendant's Motion to Dismiss should be denied,

WHEREFORE, the Plaintiff respectfully request that the Court deny the Defendant's Motion, as well as such other and further relief as may be just and proper.

Dated: Garden City, New York
 July 14, 2023



Austin Graff